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ABSTRACT

The availability of law libraries to inmates is a logical extension of a prisoner's right to "access to the courts." This report discusses the need for prison law libraries for indigent prisoners and refers to sources for determining what law books should be included in these libraries. Recommended collections for prison law libraries is attached as Appendix A, some pertinent law review commentary is Appendix B and the policies of the Federal Bureau of Prisons in this regard is Appendix C. (Author/NH)

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NATIONAL RESOURCE CENTER ON

CORRECTIONAL LAW

and

LEGAL SERVICES

# THE RIGHT OF INMATES TO A LAW LIBRARY

1705 DeSales Street, N. W.
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LI 004 181

# PRISON LAW LIBRARIES

The availability of law libraries to inmates is a logical extension of a prisoner's right of "access to the courts," which was established in Ex Parte Hull, 312 U.S. 546 (1949). In Hull, prison officials refused to mail an inmate's petition to a court, pursuant to a prison regulation which required approval of all legal documents by the institution. The Supreme Court held the regulation invalid, saying that "the state may not abridge or impair petitioner's right to apply to a federal court..." 312 U.S. at 547.

Hull was expanded in Johnson v. Avery, 393 U.S. 483 (1969). The petitioner in the Johnson case was an inmate serving a life sentence in the Tenessee State Penitentiary. When he was transferred to a maximum security section of that institution, for assisting other inmates in preparation of writs, he filed a writ challenging the state regulation. The Supreme Court held that to punish "jailhouse lawyers" is to effectively deprive indigent, illiterate inmates of access to the courts. They noted that the State of Tennessee had no legal assistance program for these inmates, and that many inmates in the penitentiary were without funds to hire counsel and were without sufficient education to intelligently prepare their own legal actions.

In this setting a group of California inmates challenged the restricted list of law books available for prison circulation, on the grounds that the lack of adequate law books denied indigent inmates, and "jailhouse lawyers" for illiterate inmates of their rights of access to the courts. Gilmore v. Lynch, 319 F. Supp. 105 (N.D. Cal 1970). The complaint indicated that there were no annotated codes, no reports, only one law text and no journals or services such as United States Law Week. The state did maintain a lending system whereby

inmates could borrow legal materials from the state law library, but in point of fact, this system was of little use to the inmate, and these books were also limited. Only one copy of the California and federal cases, and the California codes was available for 30,000 inmates, and missing and lost volumes were not replaced. (In a footnote, the court noted that 93 volumes of the United States Reports were missing and thus unavailable for circulation. 319 F. Supp. at 108). The law books actually available in the prisons were:

1. California Penal Code
2. California Welfare and Institutions Code
3. California Health and Safety Code
4. California Vehicle Code
5. United States and California Constitutions
6. A recognized law dictionary (such as Blacks)
7. Witkins California Criminal Procedures (Bender Moss Co.)
8. Subscription of California Weekly Digest
9. California Rules of Court
10. Rules of the United States Court of Appeals
11. Rules of the United States Supreme Court

The state argued that there was no affirmative duty on the part of the state to supply any law books at all; indeed what library facilities existed at all were a matter of governmental grace and privilege, to be withheld or conditioned as the state ordered.

The three-judge federal court held that "some provision must be made to ensure that prisoners have the assistance necessary to file petitions and complaints which will in fact be fully considered by the courts." 319 F. Supp. at 110. It went on to say that the prison law library was the only provision California even attempted to make for indigent prisoners, and the restricted nature of the

of the books available "raises serious equal protection questions..." and seriously infringes upon the "the plaintiffs' very clearly defined right to reasonable access to the courts..." 319 F. Supp. at 111.

> The alternatives open to the State are legion. It might authorize Public Defenders to help inmates in collateral proceedings. Or it could institute programs whereby law students and professors could aid the indigent convict. The solution thus-far chosen by California is patchwork: the affluent are guaranteed the right to communicate with private counsel and to buy personal law books without restriction save as to space limitations. The indigent, however, are relegated to seeking out fellow inmates with legal knowledge, and to the resources of the prison law library, the contents of which are severely limited under the regulation now under attack. Id. at 111.

This case, under the name Younger v. Gilmore, 404 U.S. 15 (1971), was affirmed in a per curiam opinion by the Supreme Court, with a simple citation to Johnson v. Avery, 393 U.S. 483 (1969). The implication of this summary treatment of the case seems to be that Gilmore is simply the logical extension of Hull and Johnson. The lack of an opinion, however, may leave some problems in the day-to-day administration of the libraries.

First of all, what books are required to be in the library? The lower court's opinion makes it clear what is not sufficient. A valuable guideline is the minimum requirement adopted by the American Corrections Association in August, 1972 (see Appendix A, attached). Other reliable sources, on a local level, may be the local chapter of the American Association of Law Libraries, and area librarians who may be willing to testify as expert witnesses. It may also be instructive to find out what kinds of law books are available in large local law firms, legal services and public defender offices. The West Publishing Company has also developed a comprehensive program for placing law books in prisons, and details on this plan are available from Mr. Charles Kitzen,

170 Old Country Rd., Minneola, New York 11501.

The potential expense of the new library is an issue likely to be raised by the state. While as a matter of constitutional law this should not be a consideration--and indeed the Gilmore courts did not consider this--it is a practical problem which may arise. The Library Services and Construction Act, Title III, provides federal assistance to states to establish and extend library services. In addition, the L.E.A.A. has allocated funds for prison library services (contact L.E.A.A.'s Department of Corrections, Washington, D.C.), and the Department of Health, Education and Welfare, Division of Library Programs, has also indicated interest in this area. While these suggestions do not automatically solve the budgetary problem, they indicate that these questions are not insurmountable.

Prison officials may also attempt to develop rules and regulations designed to regulate the use of the library. While this may be rationally justifiable on administrative and disciplinary grounds, it is definitely clear, from the Gilmore opinion, that stringent and petty rules which realistically prevent inmates from the effective use of the law library, are invalid. After all, if the presence of an inadequate library denies inmates of their right of access to the courts, then clearly it follows that unduly restricting the use of whatever library is available also denies access to the courts.

Additionally, the state may argue that Gilmore dealt with only indigent prisoners and with "jailhouse lawyers." These defenses tend to turn primarily upon specific fact situations, and the attorney should be aware of such problems in advance and be prepared to deal with them accordingly. However, it is also possible to argue that Gilmore should not be accorded such a narrow interpretation, but rather that it applies to provide all inmates at the institution, regardless of financial situation, the use of the law library once its existence

has been established. Alternatively, the state may argue that a law library is not required because it provides a viable substitute, such as a resident attorney or a law school assistance program. Again, an attorney contemplating a suit should be aware of this issue, and be prepared to demonstrate that the alternate program is in fact not sufficient. This opens an entire new area of case law which is available from the Center upon request.

For your additional information, you will find attached the ACA-AALL minimum standards for law libraries (Appendix A); some pertinent law review commentary (Appendix B); and the policies of the Federal Bureau of Prisons in this regard (Appendix C).

The National Center for Correctional Law stands ready to provide whatever additional specific information you may require should you decide to pursue these issues further. Please feel free to contact us again.

APPENDIX A

# RECOMMENDED COLLECTIONS

FOR

# PRISON LAW LIBRARIES

American Association of Law Libraries

Special Committee on Law Library Service to Prisoners

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## Introduction

This booklet contains two lists of books recommended for prison law libraries. List One, a list of law books for a minimum collection in a prison library is just that: a minimum collection. In the opinion of this sub-committee, anything less than the collection in List One will be inadequate for the most basic legal research that might be done by a prisoner or the type of "jail-house lawyer" contemplated by the Supreme Court in Avery v. Johnson (393 U.S. 483, 89 Sup. Ct. 747).

List Two is an expanded list for a truly adequate prisoner law library and should suffice for most legal research by prisoners. List Two only contains court decisions starting in 1950. It is strongly recommended that those institutions that can afford it purchase court decisions starting with volume one of each set.

It may sometimes be necessary for prisoner researchers to request books or photocopies of materials not included in their own libraries. In such cases they can find out which law libraries will assist them by consulting the directory, Law Libraries Which Offer Service To Prisoners, referred to below.

We sincerely hope that prison administrators and others responsible for law libraries in prisons will find these lists helpful in selecting materials that will make their libraries realistic research centers for prisoner self-help. We recognize that self-help is merely an expedient substitute for the advice and assistance of legal counsel, but it seems to be a more attainable goal for the present.

Assistance in obtaining materials listed herein, or legal publications generally, may be had by calling upon the law librarians in each state, especially those at the libraries listed in Law Libraries Which Offer Service To Prisoners. That directory can be obtained from the chairman of the Special Committee on Law Library Services to Prisoners, Mrs. Elizabeth H. Poe, Law Librarian, State Library of Pennsylvania, Law Library Bureau, Box 1601, Harrisburg, Pa. 17126.

Sub-Committee on Recommended Collections for
Prison Law Libraries

O. James Werner, Chairman

Ruth H. Brunson

June 1972

Forrest S. Drummond

American Association of Law Libraries
Special Committee on
Law Library Services to Prisoners

CHECKLIST ONE:
MINIMUM COLLECTION FOR PRISON LAW LIBRARIES

I. Federal and State Prisons

A. Federal Materials

1. United States Code Annotated. Constitution: Titles 18, 28 (Sec. 2241-2255, Federal Rules of Appellate Procedure, Rules of Supreme Court); 42 (Sec. 1981-1985). St. Paul: West. 26 vols. and two pamphlets. $195.00 ($58.50 annual upkeep)

or

* Federal Code Annotated. Constitution; Court Rules-Criminal Proceedings; Titles 18; 28 (Sec. 2241-2255); 42 (Sec. 1981-1985). Rochester: Lawyers Cooperative. 7 vols. and pamphlet. $129.00 ($31? annual upkeep)

2. United States Reports. Washington, D.C.: U.S. Government Printing Office. Vol. 361-, 1960-. 36 vols. $204.00? ($35 annual upkeep)

or

Supreme Court Reporter. St. Paul: West. Vol. 80-, 1960-. 12 vols. $255.00 ($42.50 annual upkeep)

or

United States Supreme Court Reports. (Lawyers Edition 2d Series). Rochester: Lawyers Cooperative. Vol. 4- , 1960-. 23 vols. $402.50 ($82.50 annual upkeep)

3. Federal Reporter. (2d Series). St. Paul: West. Vol. 273- , 1960- . 177 vols. $1,564.00 ($180 annual upkeep)

4. Federal Supplement. St. Paul: West. Vol. 180- , 1960- . 155 vols. $1,114.00 ($180 annual upkeep)

5. Shepard's United States Citations. Colorado Springs: Shepard, 1963. 5 vols. $145.00 ($48 annual upkeep)

6. Shepard's Federal Citations. Colorado Springs: Shepard. Federal Supplement; Federal Reporter, 2d Series. 201-390 vol. (6th ed.). 1969 Series. $90.00 ($28 annual upkeep)

7. Rules of local federal district courts. Free from court clerks.

* Title changed, See Expanded Collection I.A.1.

B. General Materials

1. Bailey, F. Lee and Henry B. Rothblatt. Complete Manual of Criminal Forms. Federal and State. Rochester: Lawyers Cooperative, 1968. $35.00 ($7 annual upkeep)

2. Ballentine, James A. Ballentine's Law Dictionary (3d ed. by James A. Anderson). Rochester: Lawyers Cooperative, 1969. $20.00

or

Black, Henry C. Black's Law Dictionary (Rev. 4th ed.) St. Paul: West, 1968. $14.50

3. Cohen, Morris L. Legal Research in a Nutshell (2d ed.). St. Paul: West, 1971. $4.50

4. Criminal Law Reporter. Washington, D.C.: Bureau of National Affairs. Weekly. 2 vols. (looseleaf) $148.00 first year ($138 annually thereafter)

5. Fox, Sanford J. Juvenile Courts in a Nutshell. St. Paul: West, 1971. $4.50

6. Israel, Jerold H. and Wayne R. LaFave. Criminal Procedure in a Nutshell. St. Paul: West, 1971. $5.00

7. Prison Law Reporter. Seattle: Administration of Criminal Justice and Prison Reform Committee, Young Lawyers Section, American Bar Association, 1971- . Subscription: $14.00 a yr. ($1 a year for prisoners.)

8. Sokol, Ronald P. Federal Habeas Corpus (2d ed.). Charlottesville, Va.: Michie, 1969. $25.00

II. Additional Materials for State Prisons

1. Reports of highest and itermediate appellate courts of state. 1960- .

2. State statutes compilation.

3. State digest of court decisions.

4. Shepard's Citations for state.

5. Treatise covering state criminal practice and procedure.

6. Volume containing rules of state courts, if available, otherwise, rules obtainable free from clerks of some state courts.

N: All materials should be kept up to date by supplementation.

All prices are subject to change and do change from time to time.

Checklists of materials for each state are available on request from A.A.L.L. Special Committee on Law Library Services to Prisoners.

## Shelf Space Needed For Legal Materials

| Federal | Initial Growth | Yearly Growth |
|---|---|---|
| U.S. Code Annotated | 20" | 4" |
| Federal Code Annotated | 12" | 2" |
| U.S. Reports | 9' | 10" |
| Supreme Court Reporter | 5' | 9" |
| U.S. Supreme Court Reports (L.Ed.) | 4' | 4" |
| Federal Reporter 2d | 23' | 5' |
| Federal Supplement | 20' | 3¼' |
| Shepard's U.S. Citations | 18" | 1" |
| Shepard's Federal Citations | 5" | 1" |
| Rules of Local Federal District Courts | 1" | |
| GENERAL | | |
| Treatises and Dictionary | 15" | 2" |

American Association of Law Libraries
Special Committee on
Law Library Services to Prisoners

CHECKLIST TWO:
EXPANDED COLLECTION FOR PRISON LAW LIBRARIES
Draft

I. Materials for both Federal and State Prisons

A. Federal Materials

1. United States Code Annotated. St. Paul: West. 164 vols. $902.00*

or

United States Code Service (Lawyer's Edition). Rochester: Lawyers Cooperative. 53 vols. $20.00 per month (until 6/30/75)

2. United States Reports. Washington, D.C.: U.S. Government Printing Office. Vol. 340- , 1950- . 61 vols. $350.00 ($36.50 annual upkeep)

or

Supreme Court Reporter. St. Paul: West. Vol. 71- , 1950- . 31 vols. $354.00 ($45 annual upkeep)

or

United States Supreme Court Reports (Lawyers' Edition). Rochester: Lawyers Cooperative. Vol. 95- , 1950- . 34 vols. $564.50** ($70 annual upkeep)

3. Federal Reporter. (2d Series). St. Paul: West. Vol. 179- , 1950- . 261 vols. $2,021.00 ($180 annual upkeep)

4. Federal Supplement. St. Paul: West. Vol. 88- , 1950- . 237 vols. $1,857.00 ($180 annual upkeep)

5. Modern Federal Practice Digest. St. Paul: West, 1960-61. 83 vols. $1,182.25 ($250 annual upkeep)

6. Shepard's United States Citations. Colorado Springs: Shepard, 1965. 5 vols. $145.00 ($48 annual upkeep)

7. Shepard's Federal Citations. Colorado Springs: Shepard, 1965. 4 vols. $145.00 ($48 annual upkeep)

* Includes 3 years pocket parts; 2 years of recompiled volumes; 2 years of U.S. Code Congressional and Administrative News; 2 years Federal Tax Guide Reports.

** Includes United States Supreme Court Reports Digest.

7. One or more of the following:

   a. Prison Law Reporter. Seattle: Administration of Criminal Justice and Prison Reform Committee, Young Lawyers Section, American Bar Association, 1971- . Monthly. $14.00 a year ($1 a year for prisoners)

   b. Prisoners Rights Newsletter. State University of New York, 1971- . Free?

   c. Penal Digest International. Iowa City, Iowa: Penal Digest International, 1971- . Monthly. $9.00 a year

8. Martindale-Hubbell Legal Directory. Summit, N.J.: Martindale-Hubbell. Annual. 5 vols. $55.00 a year.

9. Criminal Law Bulletin. Boston: Warren, Gorham & Lamont. Monthly. $25.00 a year

II. Additional Materials for State Prisons

1. Set of annotated statutes of State.

2. State session laws subsequent to coverage in annotated statutes and supplements, if not covered by legislative service of annotated statutes publisher.

3. Court reports of appellate courts of State, 1950- .

4. Digest of court decisions of State.

5. Shepard's citations for State.

6. Rules of State courts not covered in annotated statutes. Single volume edition preferred, if available; otherwise, free copies may be obtained from clerks of some courts.

7. State legal encyclopedia, if any.

8. One or more state practice books (with forms) on evidence, criminal law and procedure.

Note: It is recommended that complete sets of the court reports listed be purchased, if funds are available, beginning with volume one of each set.

All materials should be kept up to date by subscriptions or supplementation.

All prices are subject to change and do change from time to time. Checklists of materials for each State are available upon request from A.A.L.L. Special Committee on Law Library Services To Prisoners

## Shelf Space Needed For Legal Materials

| Federal | Initial Space | Yearly Growth |
|---|---|---|
| U.S. Code Annotated | 19' | 1" |
| Federal Code Annotated | 7'6" | 8" |
| U.S. Reports | 12'10" | 10" |
| Supreme Court Reporter | 7' | 9" |
| U.S. Supreme Court Reports (L.Ed.) | 7'8" | 4" |
| Federal Reporter 2d | 50' | 5' |
| Federal Supplement | 34'8" | 3½' |
| Modern Federal Practice Digest | 15' | 9" |
| Shepard's U.S. Citations | 15" | 1" |
| Shepard's Federal Citations | 12" | 1" |
| Wright, Charles A., Federal Practice and Procedure | 6¾" | 1" |
| Orfield, Lester B., Criminal Procedure Under the Fed. Rules | 14" | 1" |
| Sokol, Ronald P., Federal Habeas Corpus | 2" | - |
| **General** | | |
| Black, Henry C., Black's Law Dictionary | 3¼" | - |
| Ballentine, James A., Ballentine's Law Dictionary | 3" | - |
| Criminal Law Reporter | 6½" | - |
| Anderson, Ronald A., Wharton's Criminal Law and Procedure | 9½" | - |
| Israel, Jerold H. & Wayne R. LaFave, Criminal Procedure in a Nutshell | 1" | - |
| Perkins, Rollin M., Criminal Law | 2" | - |
| LaFave, Wayne R. & Austin Scott, Jr., Hornbook on Criminal Law | 2½" | - |
| Hall, Livingston, Yale Kamisar, Wayne LaFave & Jerold Israel, Cases on Modern Criminal Procedure | 2½" | ½" |
| Bailey, F. Lee & Henry Rothblatt, Complete Manual of Criminal Forms, Federal and State | 2½" | ½" |
| Cohen, Morris L., Legal Research in a Nutshell | ½" | - |
| Fox, Sanford J., Juvenile Courts in a Nutshell | 1" | - |
| Prison Law Reporter | 2" | - |
| Prisoners' Rights Newsletter | 2" | - |
| Penal Digest International | 2" | - |
| Martindale-Hubbell Legal Directory | 21" | - |
| Criminal Law Bulletin | 6½" | 2½" |

NOTE, 42 U.Colo. L. Rev. 275, 300 - 301(1970):

APPENDIX B

Since the reasons asserted by the courts for upholding restrictions on the availability of legal materials are so tenuous, the underlying rationale implicit in these decisions must be that, since an indigent person on the outside does not have the right to demand a law library at what is for him an accessible distance from his house nor a right to have an appointed counsel in civil cases even if this denial creates an unequal protection of the laws, indigent prisoners should have neither of these rights. A prison law library is not considered a basic necessity of life for prisoners, as are adequate food, shelter and clothing, and therefore the state and federal governments are not obligated to furnish the prisons with law libraries. Although it is difficult to contend that a law library is as much a necessity of life as food and shelter, it can be argued that it closely approaches such a status for a prisoner, although not for an indigent person on the outside, and that law libraries should be provided even if they may not be constitutionally required.

First, it is indisputable that a legal library would aid rehabilitation. This is an area where the prisoner has a vested interest and the motivation to do research, thereby enhancing his reading and other intellectual skills. Also, an argument for providing libraries can be made by using an analogy to the right to counsel. Benefit of counsel is deemed a necessity during the entire period where there is a confrontation between an individual and the state, from arrest until completion of appeal. It may be argued that when one is incarcerated, this confrontation continues, the state completely taking control of the individual's life. Unlike the grievances of an individual on the outside, the vast majority of the infringements upon a prisoner's civil rights are caused by this continuing confrontation between the individual and the state. Furthermore, the individual on the outside who cannot afford to hire a lawyer has available to him state or university law libraries while the prisoner is cut off from all opportunities to use these facilities. Therefore, if the state will not provide the prisoner with counsel for civil actions it should at least be obligated to provide adequate legal facilities, so that the prisoner can pursue enforcement of his civil rights himself.

Even if acquisition and retention of legal materials are unrestricted except for administrative and safety reasons, it may be argued that this is not a valid alternative to providing law libraries and does not fulfill the government's constitutional obligation to enable the prisoner to prepare for legal actions. The richer prisoners will be able to buy more books or hire an attorney, and the result will be an unequal protection of the law, because they will be accorded more legal preparation than poor ones. Although this is true on the outside as well as on the inside, the prisoner, as mentioned above,[119] is in a different situation than the indigent person on the outside: being under the complete control of the state, the confrontation between the state and prisoner continues; the earning power of the prisoner is completely cut off with the state substituting itself as his sole support; and, because of this control of the state over the individual, most of the prisoner's legal problems are against the state and not other individuals. Moreover, since the *government* has cut off the prisoner's earning power and thus his ability to equalize this inequity himself, the only way by which the state or federal government can constitutionally avoid not only creating, but also perpetuating, an unequal protection of the laws which violates the fifth and fourteenth amendments, and at the same time not infringe on the prisoner's constitutional right of reasonable access to courts and legal materials, is to provide an adequate law library. Such a library then becomes a constitutional requirement.

See Also, 5 Clearinghouse Review 645

APPENDIX C

**BUREAU OF PRISONS** **WASHINGTON, D. C. 20537**

# Policy Statement

2001.2B

5-8-72

**SUBJECT:** ACCESS TO LEGAL REFERENCE MATERIALS AND LEGAL COUNSEL AND PREPARATION OF LEGAL DOCUMENTS

1. POLICY. It is the intent of the Bureau of Prisons to afford inmates reasonable access to legal materials, legal counsel and a reasonable opportunity to prepare their legal documents. The inmates program will continue without undue disruption by legal activities except in those instances where inmates are confronted with imminent deadlines established by the court in which the inmates lawsuits are pending.

2. PURPOSE. The purpose of this Policy Statement is to set forth the policies to be applied throughout the system. In certain instances the Policy Statement is purposely general to enable individual institutions, within these guidelines, to promulgate local rules and regulations which are most appropriate to their needs.

All institutions are to submit copies of their local policy statements which implement this Policy Statement to the Office of General Counsel and Review within 60 days from this date.

* 3. DIRECTIVE AFFECTED. Policy Statement 2001.2A dated 6-29-71 is hereby rescinded. Form BP-ADM-6 is discontinued.

* 4. PROVISIONS FOR LEGAL RESEARCH MATERIALS.

a. In the fall of 1971, the United States Supreme Court found the California Department of Corrections inmate library regulations, which were similar to the Bureau of Prisons, to be deficient in that they deprived the indigent inmate of an opportunity to consult basic legal reference in preparation of legal actions. Therefore, we are expanding the content of libraries, and revising the methods of acquisition of the legal materials as well as the receipt and handling of these materials within the institutions.

b. In order to provide uniformity and meaningful resource materials consistent with the needs of each institution we will acquire the following for each institution:

1) United States Code Annotated

a. Title 18 - all volumes (Criminal Code and Criminal Procedures)

b. Title 28 - Sections 2241 to end (Habeas Corpus and Motions to Vacate Sentences)

c. Title 28 - Volumes containing Supreme Court Rules, Federal Rules of Appellate Procedures, and U.S. Court of Appeals Rules

d. Federal Rules of Civil Procedures (in pamphlet form)

e. Title 21 - (Food and Drug)

f. Title 26 - Sections 4001 to end (Narcotic Offenses)

g. Title 42 - Sections 1975 - 2010

h. U.S. Constitution, Amendment 1 to end

2) Black's Law Dictionary

3) United States Law Week (Bureau of National Affairs)

4) Criminal Law Reporter (Bureau of National Affairs)

5) Hall and Kamisar, Modern Criminal Procedure

6) Bureau of Prisons Policy Statements of interest to inmates to be maintained in notebook form.

c. In each adult institution we intend to acquire in addition to the above the current issues of:

1) United States Supreme Court Reports

2) Federal Reporter Second

3) Federal Supplement

d. The Central Office Librarian will acquire and distribute the basic law library materials to each institution. Previously acquired materials should be retained, and inmate-donated books and materials may be added to the collection. In case there is a question as to the acceptance of a particular volume, the Office of General Counsel should be consulted.

e. Maintenance of the materials once received will be the responsibility of the institution. Each institution should appoint one person to be designated "law librarian." This person should, if at all possible, have some familiarity with library, business or clerical type work. Most materials once acquired will need little maintenance, however, the Criminal Law Reporter and the United States Law Week are looseleaf publications with weekly supplements which must be correctly filed if these services are going to be of use as intended.

f. It is preferable that each institution set aside a sufficiently large room where the books may be kept and where the inmates may work at tables without the need for removing the materials. In planning for the expanded law library, especially of the adult institutions, it must be kept in mind that as each reporter is obtained it becomes a permanent part of the collection. Therefore, in selecting the site for the law library, the expanding nature of the collection should be taken into consideration.

g. It is contemplated that in each adult institution, only one set of the case reporters will be obtained for the use of all inmates. With respect to the basic resource materials, however, additional sets will be furnished when it can be shown that inmate assignment prohibits frequent access to the main law library.

h. Incumbent on the purchase of these additional materials is that they be available for inmate use as needed. Where possible, evening and weekend hours should be provided. Institution copying equipment may be made available to reproduce materials needed for research outside the library area. When this is done, procedures should be established for an inmate to request a reasonable amount of reproduced material. It is suggested that the request form contain a space for the inmate to indicate why material is needed outside the time made available in the library. By providing ample hours for library usage and by making the copying equipment available, when possible, multilation and theft of legal materials can be minimized. Legal materials are expensive to maintain, so supervision of the library area should be provided as necessary to protect the materials. It will be the institution's responsibility to maintain the collection intact and notify the librarian in the Central Office of permanently missing or damaged volumes so that they can be replaced. All inmates using the library should be advised of the rules which govern its use, and of the injury to all which can result from misuse of the facility provided. Unauthorized materials from the library found in an inmate's possession should of course be considered as theft or destruction of government property.

i. Each institution should separately submit to the Office of General Counsel a copy of its plan to implement the Policy Statement within sixty (60) days from this date. This should describe the area set aside for the legal materials, the hours the materials will be available, the person designated to supervise the law library, and the copying arrangements if any to be provided. If, to make the materials freely accessible to all inmates, more than one set of basic reference materials is necessary, please indicate the number needed. When doing so, please explain where it is intended each set will be used.

5. PURCHASE AND DISPOSAL OF LAW BOOKS AND OTHER LEGAL MATERIALS BY INMATES.

a. If an inmate has the financial means to purchase law books, he shall be allowed to do so unless there is a compelling reason to the contrary. It is inappropriate for an administrator to make the determination that the specific material sought by an inmate is not relevant to his case. If there appears to be clear and compelling reasons to disallow a purchase, the Office of the General Counsel should be advised before a final determination of the matter is made.

b. Law books and other materials are to be purchased only from the primary sources of supply, i.e. the publisher of law books; the clerk of court and/or a judge of the court in the case of court documents.

c. Since the institutions will be maintaining the basic reference books there should be no need to accumulate all books purchased by inmates. An inmate may donate a particular book to the library when he is finished with it, if he wishes to do so and the institution agrees to accept the offer. The physical facilities of the institution and the nature of the book are appropriate factors to be considered, i.e. whether additional books can be readily accommodated and whether the book is broad in applicability. In the event a book is not to be acquired, it should be sent home or destroyed, whichever the inmate prefers.

d. The present accumulation of obsolete and irrelevant materials may be disposed of but case reports (Federal Supplements; Federal Reporter; United States Reports) already in the library should be retained. Further accession of these reporters should be made only by mutual agreement as indicated above.

6. PREPARATION OF LEGAL MATERIALS BY INMATES.

a. Inmates should be allowed to have a reasonable amount of time to prepare their documents. What is reasonable depends upon the individual circumstances. Inmates who are required to meet deadlines in connection with pending litigation in general should be given more latitude than those who are preparing to institute suit and are not required to file within a given period. Documents presented for submission to the courts should always be forwarded. If they are threatening or indecent, a special cover letter should accompany the document explaining Bureau policy and relevant background factors and data.

* b. In 1969, the United States Supreme Court held that unless there was a reasonable alternative, one inmate could not be prohibited from assisting another in the preparation of his legal matters. Therefore, unless the institution has an active, on-going legal assistance program, one inmate should be allowed to assist another in the research for and the preparation of legal documents.

* c. Inmates in segregation status should, as far as possible, be given the opportunity to work on their legal matters and have access to legal reference materials equal to those persons in general population.

d. Preparation of legal documents in living quarters during "off duty" hours may be authorized. Factors which might preclude such arrangements could include the individuals involved or the peculiar housing accommodations.

7. USE OF TYPEWRITERS.

a. The advantage of submitting typewritten documents is well established. Thus unless it is demonstrated that the use of typewriters is not feasible in a particular institution, their use should be allowed either through inmate clerks to whom handwritten documents are submitted by the individual inmates or typed individually, or submitted to public stenographers, whichever procedure is in accordance with institution policy.

b. If there is to be a delay in having documents typed, the inmates should be so advised, and he may transmit handwritten papers to the court.

8. RETENTION OF ATTORNEYS.

a. Inmates should be allowed to contact attorneys for the purpose of representing them.

b. While it is permissable to advise an attorney of the funds which the inmate has available, and it is many times desirable to counsel with the inmate, if the inmate has attained his majority and is mentally competent to handle his own affairs, we are not to interfere with the financial arrangement between attorney and client. Neither are we to act as a guarantor or collector of the fees. The payment of retained attorney's fees is a matter between attorney and client. Administrative Form 6 is hereby discontinued.

* 9. ATTORNEY VISITS.

a. Visits by retained and appointed attorneys and by attorneys requested by an inmate or his family in contemplation of prospective legal representation shall be permitted.

b. Specific regulations pertaining to the frequency of visits shall not be established due to the fact that the number of visits necessary is dependent upon the nature and urgency of the legal problems involved.

c. The attorney should normally make an appointment with the Chief Executive Officer or his authorized representative prior to each visit but every effort should be made to accommodate an attorney's visit where prior notification was not practicable.

d. The attorney shall identify himself as the attorney for whom the visit has been approved by showing the letter from the inmate or his family requesting the visit or by showing such other information that would identify him as an attorney of the inmate he has requested to see.

e. The Bureau of Prisons reserves the right to refuse admission to one of its facilities to those who fail to comply with regulations or who seek to exploit offenders. If there is any question about the identity of the attorney or his qualification as an attorney in good standing, the matter should be referred to the Office of General Counsel and Review.

f. Visits between the attorney and his client shall not be subject to auditory supervision. Tape recordings may be used by the attorney during the course of his visit when he agrees in writing in advance of the interview that the only purpose of the recording is to facilitate the attorney-client relationship. Attachment A is a sample of a statement which might be used to assure compliance with this section.

* 10. CORRESPONDENCE BETWEEN ATTORNEY AND CLIENTS.

a. Correspondence addressed to an attorney shall be mailed from the institution unopened and uninspected. A statement to the attorney, from the Chief Executive Officer, cautioning against use of this mail to transmit contraband or to forward any matter on to unauthorized correspondents, should be attached. Inmates should be

advised that at their option and with the concurrence of their attorney, mail from the attorney will be opened in their presence but that if this election is made, it could cause some delay in the delivery of incoming correspondence. The attorney should also be advised that mail addressed to the inmate will be opened and inspected in the presence of the inmate, if the attorney indicates on the incoming envelope that this is his preference. Attachment B is a sample of that statement.

b. Correspondence addressed to an inmate by an attorney or law office may be opened, for the purposes of inspection for contraband.

c. Incoming correspondence shall be stamped immediately on arrival, on the envelope and letter, to show time of receipt. All matters in this correspondence which relate to legal advice or concern pending or prospective litigation are to be kept in strict confidence by the inspecting official. Attorney-inmate mail shall not be copied by the institution. Rejected material shall be returned to the sender, with an indication of the reason for rejection. Material consisting of or proposing violation of the law need not be returned to the sender, but should be referred to the appropriate investigating agency.

d. When, in emergency circumstances, a telephone call between the attorney and inmate is authorized, the institution staff shall assure that the person is an attorney, and shall then not monitor the conversation.

Norman A Carlson

NORMAN A. CARLSON
Director, Bureau of Prisons

Attachment
2001.2B
5-8-72

ATTACHMENT A

I,_____, a licensed attorney in the State of _____, with offices at_____, _____, visiting_____, on_____,19___, agree that my visit with this inmate is for the purpose of facilitating in the attorney-client relation and for no other purpose. I agree that any tape-recording or other recording made by me will be used only to facilitate this relationship.

_____

ATTACHMENT B

This institution retains the right to open mail from attorneys to inspect for contraband. This inspection will be done in the presence of the inmate, if the attorney so indicates on the outside of the incoming envelope. This could caused some delay in delivery. Language on the envelope could be substantially as follows: "This envelope should be opened only in the presence of the addressee."

_____
WARDEN